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OFFICE OF PETITIONS

In re Application of :
Li-How Chen et al : DECISION ON PETITIONS
Application No. 10/082,018 : UNDER 37 CFR 1.181 AND
Filed: February 20, 2002 : 37 CFR 1.313(c)(2)
Attorney Docket No. :
G074470031US03 :

This is a decision on the petitions under 37 CFR 1.181 (no fee), filed September 25, 2006, requesting withdrawal of the holding of abandonment in the above-identified application and on the petition under 37 CFR 1.313(c)(2), filed March 21, 2007.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.313(c)(2) is **DISMISSED**.

DISCUSSION OF PETITION UNDER 37 CFR 1.181

This application was held abandoned for failure to timely pay the issue fee on or before July 25, 2006, as required by the Notice of Allowance and Issue Fee(s) Due, mailed April 25, 2006. A Notice of Abandonment was mailed on August 28, 2006.

Petitioner asserts that the issue fee (and publication fee) was timely paid by authorization to the USPTO to charge the required fee(s) to Deposit Account No. 50-2092 as shown on the Part B-Fee(s) Transmittal submitted on May 10, 2006. In support of this assertion, petitioner has supplied a copy of a stamped postcard, which evidences receipt in the USPTO of the Issue Fee Transmittal on May 10, 2006. Accordingly, petitioner requests that the holding of abandonment be withdrawn.

The Issue Fee Transmittal was in fact received on May 10, 2006. However, at the time the Office attempted to charge the issue fee, there were insufficient funds in petitioner's deposit account (only \$134 was present in the deposit account). 37 CFR 1.25 requires that there must be sufficient funds in the deposit

account at all times to charge the requested fees. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee(s). Accordingly, the Notice of Abandonment mailed on August 28, 2006 was proper and will not be vacated.

It is noted that a Notice of Rescinded Abandonment was mailed on December 7, 2006. However, this Notice was mailed in error and is hereby vacated. The Office of Patent Publication has confirmed to the undersigned that this Notice was in fact mailed in error.

In view of the above, this application is abandoned for failure to timely pay the issue fee on or before July 25, 2006.

Petitioner may wish to consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

DISCUSS OF PETITION UNDER 37 CFR 1.313(c)(2)

As this application is abandoned, the petition to withdraw this application from issue is moot.

Any petition to revive should be accompanied by a renewed petition under 37 CFR 1.313(c)(2) if it is still desired to have this application withdrawn from issue.


Further correspondence with respect to this matter should be addressed as follows:

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By hand: U. S. Patent and Trademark Office
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By facsimile: (571) 273-8300
 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.


Frances Hicks
Petitions Examiner
Office of Petitions